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Attorneys for Plaintiffs Richard A. Noble and Charlene R. Noble

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

RICHARD A. NOBLE, and CHARLENE R.  
 NOBLE,

Plaintiffs,

vs.

KIEWIT PACIFIC CO., a Delaware  
 corporation; LIFE INSURANCE  
 COMPANY OF NORTH AMERICA, a  
 Pennsylvania corporation; PETER KIEWIT  
 SONS', INC. HEALTH AND WELFARE  
 PLAN; PETER KIEWIT SONS', INC., a  
 Delaware corporation; JOHN JANSEN, an  
 individual; MICHAEL PHELPS, an  
 individual; and JANE SEWELL, an  
 individual

Defendants.

Case No. C08-00666-SI

**DECLARATION OF CRAIG ALAN HANSEN  
 IN SUPPORT OF:**

- (1) MOTION TO SHORTEN TIME TO  
 HEAR MOTION FOR EXPEDITED  
 DEPOSITION OF RICHARD NOBLE;**
- (2) MOTION FOR EXPEDITED  
 DEPOSITION OF RICHARD NOBLE.**

DATE: TBD  
 TIME: TBD  
 PLACE: Courtroom 10, 19<sup>th</sup> Floor

Hon. Susan Illston

1 I, Craig Alan Hansen, declare:

2 1. I am an attorney with the law firm of Beck, Ross, Bismonte & Finley, LLP, one of the  
3 attorneys of record for plaintiffs Richard Noble and Charlene Noble. I have personal knowledge of the  
4 matters stated in this declaration and, if called as a witness, would competently testify to them.

5 2. On January 31, 2008, my office contacted Kiewit's in-house counsel, Glenn Summers,  
6 and asked that he agree to an expedited deposition of Richard Noble. Summers directed us to Kiewit's  
7 outside counsel, Kari Levine.

8 3. Later that day, we contacted Levine, explained Mr. Noble's deteriorating health status,  
9 and asked her to stipulate to an expedited deposition. Levine responded that she would get back to  
10 plaintiffs the following week and asked for "medical documentation" concerning plaintiffs "current  
11 health status and prognosis."

12 4. On February 5, 2008, Levine wrote to our office advising that she had "out of state"  
13 depositions that prevented her from participating at Mr. Noble's deposition before February 29, 2008  
14 (i.e., over three weeks later).

15 5. On February 7, 2008, we provided Levine with a declaration from Mr. Noble's  
16 oncologist, Dr. Lesley Martin, advising that Mr. Noble's condition is "fatal and deteriorating" and  
17 cautioning that "if Mr. Noble is expected to remain lucid for his deposition, [she] would strongly  
18 recommend that such a deposition take place in the next one to two weeks." We urged Levine to  
19 cooperate in coordinating an expedited deposition within that time frame and asked for her response  
20 by close of business on February 8, 2008. We did not receive the requested response from Levine.

21 6. Attached hereto as Exhibit A is a copy of the e-mail correspondence referenced above  
22 in Paragraphs 2 through 5.

23 7. On February 1, 2008, our office contacted Kathleen K. Tice, an attorney at the CIGNA  
24 Member Claims Litigation Unit to coordinate service of process and to request that LINA agree to an  
25 expedited deposition of Mr. Noble. Tice advised that she would accept service for LINA and would  
26 communicate plaintiffs' request to LINA's outside counsel.

27 8. On February 7, 2008, after hearing nothing more from Tice or LINA's outside counsel,  
28 our office forwarded Tice a copy of Dr. Martin's declaration and again asked her to stipulate to an

1 expedited deposition.

2 9. The following morning, on February 8, 2008, I received a telephone call from LINA's  
3 outside counsel, Adrienne Publicover. Publicover indicated that she did not have strong feelings one  
4 way or the other about Mr. Noble's deposition and doubted whether LINA would participate. I asked  
5 Publicover to let me know by the end of the day whether, in any event, LINA would stipulate to an  
6 expedited deposition of Mr. Noble. Publicover agreed to communicate that request to LINA. Since  
7 then, we have heard nothing more from Publicover or LINA.

8 10. Attached hereto as Exhibits B and C are copies of the e-mail correspondence referenced  
9 above at Paragraphs 7 through 9.

10 11. Plaintiffs have made no prior requests to shorten time for a hearing or for expedited  
11 discovery.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14 This declaration was executed on February 8, 2008 in San Jose, California.

15  
16 /s/ Craig Alan Hansen  
17 Craig Alan Hansen  
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**Craig A. Hansen**

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**From:** Craig A. Hansen  
**Sent:** Thursday, February 07, 2008 3:36 PM  
**To:** 'Levine, Kari'  
**Cc:** Ron C. Finley; Alfredo A. Bismonte  
**Subject:** RE: Nobel v. Kiewit, et al  
**Importance:** High  
**Attachments:** Declaration of Dr. Lesley Martin.pdf

Kari,

Thank you for your e-mail.

In response to your request for documentation of our client's current health status, attached is a declaration from Richard Noble's oncologist, Dr. Lesley Martin. As Dr. Martin explains, our client suffers from terminal cancer for which he was recently hospitalized. While he was released under Hospice care, Dr. Martin describes Richard's condition as both "terminal and deteriorating." And in light of that, along with the progressive need to increase his medications, Richard's level of coherence is expected to steadily decline. Dr. Martin believes that if Richard is expected to be lucid for his deposition, we need to complete that deposition in the next one to two weeks.

We are sorry to hear that you have scheduled out-of-state depositions over the next 3 weeks, but must ask you to work with us towards scheduling a deposition much earlier than that. We simply don't have any more time. We would propose that you either find a day that you can break away from your depositions or find another attorney that can fill in for you. Given that you work with a very large law firm, we believe that our proposal is reasonable under these dire circumstances.

Accordingly, please let us know by the end of the day tomorrow whether you'll agree to conduct Richard's deposition in the next one to two weeks. Richard does not have the energy for a full day deposition. So we are looking at February 14 and 15, or perhaps February 20, 21 or 22. If we do not hear from you by the end of the day tomorrow, we'll need to seek judicial assistance concerning this matter on an expedited basis.

Craig Alan Hansen  
Beck, Ross, Bismonte & Finley, LLP  
50 West San Fernando Street, Suite 1300  
San Jose, CA 95113  
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Thank you, Beck, Ross, Bismonte & Finley, LLP

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**From:** Levine, Kari [<mailto:klevine@seyfarth.com>]  
**Sent:** Tuesday, February 05, 2008 6:33 AM

2/8/2008

**To:** Craig A. Hansen  
**Cc:** Ron C. Finley; Alfredo A. Bismonte  
**Subject:** RE: Nobel v. Kiewit, et al

Good morning, Craig. Upon my return to the office today, I note that I have not received the medical documentation I requested regarding your client's current health status and prognosis. This documentation is necessary for me to evaluate your request to stipulate to expedited discovery in this action. Also, please be advised that I am in the office sporadically this week and am traveling Saturday out of state for depositions which keep me out of state until Wednesday, February 27, 2008. Assuming the medical documentation you provide regarding Mr. Noble's prognosis warrants my taking his deposition outside of the federal rules, we should discuss scheduling on one of these dates that I have available: Friday, February 29, Wednesday, March 5 or Thursday, March 6.

I look forward to hearing from you and to reviewing the documentation you provide so that we might discuss scheduling.

**Kari Erickson Levine**

Seyfarth Shaw, LLP  
560 Mission Street, Suite 3100  
San Francisco, CA 94105  
Phone (415) 544-1078  
Fax: (415) 397-8549  
Mobile: (415) 722-7285  
klevine@seyfarth.com

-----Original Message-----

**From:** Craig A. Hansen [mailto:chansen@beckcross.com]  
**Sent:** Friday, February 01, 2008 11:55 AM  
**To:** Levine, Kari  
**Cc:** Ron C. Finley; Alfredo A. Bismonte  
**Subject:** RE: Nobel v. Kiewit, et al

Kari,

Thank you for your e-mail. We'll look forward to speaking with you early next week.

In the meantime, here is a courtesy copy of the complaint that we filed in this matter. Per the instruction of Kiewit's in-house counsel, Glenn Summers, we will also be providing you with the service papers for all Kiewit-related defendants in this matter (including Kiewit Pacific Co., Peter Kiewit Sons', Inc., Peter Kiewit Sons', Inc. Health and Welfare Plan, John Jansen, Michael Phelps, and Jane Sewell).

Craig Alan Hansen  
Beck, Ross, Bismonte & Finley, LLP  
50 West San Fernando Street, Suite 1300  
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Tel: 408.938.7900  
Fax: 408.938.0790  
email: chansen@beckcross.com  
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Thank you, Beck, Ross, Bismonte & Finley, LLP

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-----Original Message-----

From: Levine, Kari [mailto:klevine@seyfarth.com]  
Sent: Friday, February 01, 2008 11:03 AM  
To: Ron C. Finley  
Subject: Re: Nobel v. Kiewit, et al

Thank you for your email. I will be in touch with you and Craig Hansen early next week when I return. In the meantime, in order to facilitate our discussions, it would be helpful if you could provide medical documentation regarding your client's current health status and prognosis which will be necessary for me to evaluate the expedited needs/timing issues you have raised. Thanks. I look forward to speaking with you next week.

----- Original Message -----

From: Ron C. Finley <rfinley@beckcross.com>  
To: Levine, Kari  
Cc: Craig A. Hansen <chansen@beckcross.com>; Diane Rosenbaum <diane@beckcross.com>; Alfredo A. Bismonte <abismonte@beckcross.com>  
Sent: Fri Feb 01 11:10:57 2008  
Subject: Re: Nobel v. Kiewit, et al

Kari:

We represent Richard and Charlene Noble.

We understand from the email chain below that you represent the Kiewit defendants in this matter and will accept service of the Complaint on their behalf. As you know, Richard Noble's health is deteriorating and he has been given less than one month to live. Accordingly, we believe that it is in all parties' best interests to take his deposition as soon as possible. Would you please contact me or Craig Hansen immediately to discuss setting Richard Noble's deposition on an expedited basis.

Sincerely,

Ron C. Finley  
Beck, Ross, Bismonte & Finley, LLP  
Fairmont Plaza  
50 West San Fernando Street, Suite 1300  
San Jose, Ca 95113  
Tel: 408.938.7900 Fax: 408.938.0790 Email: rfinley@beckcross.com

2/8/2008

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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From: Ron C. Finley  
Sent: Friday, February 01, 2008 8:56 AM  
To: 'Glenn.Summers'  
Cc: Craig A. Hansen; Diane Rosenbaum  
Subject: RE:

Glenn:

Thank you for your response. I am familiar with the Seyfarth firm and will have the documents forwarded to your counsel.

Sincerely,

Ron C. Finley  
Beck, Ross, Bismonte & Finley, LLP  
Fairmont Plaza  
50 West San Fernando Street, Suite 1300  
San Jose, Ca 95113  
Tel: 408.938.7900 Fax: 408.938.0790 Email: rfinley@beckross.com

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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From: Glenn.Summers [mailto:GLENN.SUMMERS@kiewit.com]  
Sent: Friday, February 01, 2008 8:50 AM  
To: Ron C. Finley  
Cc: Alfredo A. Bismonte; Craig A. Hansen; Diane Rosenbaum; Levine, Kari  
Subject: RE:

Dear Mr. Finley,

We are sympathetic and concerned about Mr. Noble's situation. However, at the same time, we are puzzled. The last information we received (Mr. Zeller's letter of January 7, 2008), indicated that as recently as three weeks ago Mr. Noble was willing and able to work.

Kari Levine of Seyfarth Shaw is representing Kiewit on this matter. She is authorized to accept service for the Kiewit-related defendants. Please follow up with her.

Sincerely,

Glenn Summers

From: Ron C. Finley [mailto:rfinley@beckross.com]  
Sent: Thursday, January 31, 2008 5:40 PM  
To: Glenn.Summers  
Cc: Alfredo A. Bismonte; Craig A. Hansen; Diane Rosenbaum

2/8/2008



Subject:

Dear Mr. Summers,

Our law firm represents Richard Noble and Charlene Noble in a federal lawsuit recently filed in the Northern District of California against Kiewit Pacific Co., Peter Kiewit Sons', Inc., Peter Kiewit Sons', Inc. Health and Welfare Plan; John Jansen, Michael Phelps, Jane Sewell, and Life Insurance Company of North America. That lawsuit includes federal claims for denial of employee benefits under ERISA and state-based claims for wrongful termination under FEHA and common law. A copy of the Noble's complaint is attached for your reference.

As you are probably aware, Mr. Noble is dying from cancer. His condition is growing progressively worse and his doctors have advised him that he may have less than one month to live. I hope and trust that you would agree that under these dire circumstances, all parties to this matter share the collective interest of securing Mr. Noble's testimony as soon as possible.

In order to reach that common goal, we ask that you agree to accept service on behalf of all Kiewit-related defendants (i.e., all defendants other than Life Insurance Company of North America.) If you are agreeable, please let us know as soon as possible. If so, we will forward all service papers to your attention. Moreover, we request that you stipulate to the taking of Mr. Noble's deposition on an expedited basis prior to the Rule 26(f) conference. We will also direct similar requests to the Life Insurance Company of North America.

Thank you for your anticipated cooperation in this matter. Please call me by the end of business February 1, 2008. Otherwise we will serve the Complaint, Summons and related documents and formally petition the Court for an expedited deposition of Richard Noble to occur as early as next week.

Sincerely,

Ron C. Finley  
Beck, Ross, Bismonte & Finley, LLP  
Fairmont Plaza  
50 West San Fernando Street, Suite 1300  
San Jose, Ca 95113  
Tel: 408.938.7900 Fax: 408.938.0790 Email: rfinley@beckross.com

2/8/2008

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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**Craig A. Hansen**

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**From:** Craig A. Hansen  
**Sent:** Thursday, February 07, 2008 4:07 PM  
**To:** 'Tice, Kathleen K ESQ (Katie) TL16J'  
**Cc:** Ron C. Finley; Alfredo A. Bismonte  
**Subject:** RE: Noble v. Kiewit, et al.  
**Importance:** High  
**Attachments:** Declaration of Dr. Lesley Martin.pdf

Ms. Tice,

We have not yet heard from your outside counsel and need to confer with you concerning a very urgent matter.

Attached is a declaration from our client's oncologist, Dr. Lesley Martin. As Dr. Martin explains, our client Richard Noble suffers from terminal cancer for which he was recently hospitalized. While he was released under Hospice care, Dr. Martin describes Richard's condition as both "terminal and deteriorating." And in light of that, along with the progressive need to increase his medications, Richard's level of coherence is expected to steadily decline. Dr. Martin believes that if Richard is expected to be lucid for his deposition, we need to complete that deposition in the next one to two weeks.

Accordingly, please let us know by the end of the day tomorrow whether Life Insurance Company of North America will agree to conduct Richard's deposition in the next one to two weeks. Richard does not have the energy for a full day deposition. So we are looking at February 14 and 15, or perhaps February 20, 21 or 22. If we do not hear from you or your outside counsel by the end of the day tomorrow, we'll need to seek judicial assistance concerning this matter on an expedited basis.

Craig Alan Hansen  
Beck, Ross, Bismonte & Finley, LLP  
50 West San Fernando Street, Suite 1300  
San Jose, CA 95113  
Tel: 408.938.7900  
Fax: 408.938.0790  
email: [chansen@beckross.com](mailto:chansen@beckross.com)  
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Thank you, Beck, Ross, Bismonte & Finley, LLP

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**From:** Tice, Kathleen K ESQ (Katie) TL16J [<mailto:Kathleen.Tice@CIGNA.COM>]  
**Sent:** Friday, February 01, 2008 12:17 PM  
**To:** Craig A. Hansen  
**Cc:** Ron C. Finley  
**Subject:** RE: Noble v. Kiewit, et al.

Mr. Hansen- Thank you for forwarding the complaint.

As we discussed, I can accept formal service. Please forward the complaint to me at the address below.

2/8/2008

I will be retaining outside counsel and someone will be in touch with you next week.

Katie Tice

Kathleen K. Tice, Esq.  
CIGNA Member Claims Litigation Unit  
1601 Chestnut Street, TL 16J  
Philadelphia, PA 19192  
215.761.8691 (Telephone)  
215.761.5512 (Facsimile)  
kathleen.tice@cigna.com

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-----Original Message-----

**From:** Craig A. Hansen [mailto:chansen@beckcross.com]  
**Sent:** Friday, February 01, 2008 1:16 PM  
**To:** Tice, Kathleen K ESQ (Katie) TL16J  
**Cc:** Ron C. Finley  
**Subject:** Noble v. Kiewit, et al.

Dear Ms. Tice:

Thank you for taking the time to speak with Ron Finley and me this morning about the *Noble v. Kiewit* matter and agreeing to accept service of process on behalf of Life Insurance Company of North America via certified mail.

As discussed, attached is a copy of the complaint that Richard and Charlene Noble recently filed in the Northern District of California. Once we receive your contact information, we will promptly forward all service documents to you by certified mail. I also understand that you will have your outside counsel contact us as soon as possible so that we can coordinate an expedited deposition of Richard Noble.

Thanks again for your courtesy and cooperation. If you have any questions, please do not hesitate to contact Ron or myself.

Craig Alan Hansen  
Beck, Ross, Bismonte & Finley, LLP  
50 West San Fernando Street, Suite 1300  
San Jose, CA 95113  
Tel: 408.938.7900  
Fax: 408.938.0790  
email: [chansen@beckcross.com](mailto:chansen@beckcross.com)  
[www.beckcross.com](http://www.beckcross.com)

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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**Craig A. Hansen**

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**From:** Publicover, Adrienne C. [Adrienne.Publicover@wilsonelser.com]  
**Sent:** Friday, February 08, 2008 12:36 PM  
**To:** Craig A. Hansen  
**Subject:** Re: Noble v. LINA

Craig, this is further to my voice mail message of today.

As I indicated, my client received the copy of your complaint. However, there was no Notice and Acknowledgment included. If you would please forward to me, I am authorized to execute on behalf of LINA for this matter.

I understand that you also want to discuss your client's deposition. Please contact me at your convenience.

I am out of the office, but available on my cell. 925-963-4190.

Thanks, Adrienne

-----Original Message-----

From: Publicover, Adrienne C.  
To: 'chansen@beckcross.com' <chansen@beckcross.com>  
Sent: Fri Feb 08 12:18:58 2008  
Subject: Re: Noble v. LINA

Thanks Craig!

-----Original Message-----

From: Craig A. Hansen <chansen@beckcross.com>  
To: Publicover, Adrienne C.  
CC: Ron C. Finley <rfinley@beckcross.com>; Alfredo A. Bismonte <abismonte@beckcross.com>  
Sent: Fri Feb 08 12:11:51 2008  
Subject: RE: Noble v. LINA

Good morning, Adrienne.

The Kiewit defendants (i.e., all defendants other than Life Insurance Company of North America) are collectively represented by Kari Levine of Seyfarth Shaw, LLP. Here is her contact information:

Kari Erickson Levine  
Seyfarth Shaw, LLP  
560 Mission Street, Suite 3100  
San Francisco, CA 94105  
Phone (415) 544-1078  
Fax: (415) 397-8549  
Mobile: (415) 722-7285  
klevine@seyfarth.com

Craig Alan Hansen

Beck, Ross, Bismonte & Finley, LLP

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2/8/2008

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Thank you, Beck, Ross, Bismonte & Finley, LLP

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From: Publicover, Adrienne C. [<mailto:Adrienne.Publicover@wilsonelser.com>]  
Sent: Friday, February 08, 2008 9:08 AM  
To: Craig A. Hansen  
Subject: Noble v. LINA

Good morning, Mr. Hansen. I am in receipt of your email to Katie Tice. I am in meetings this morning, but will try to call you later.

In the meantime, would you please forward me the name and telephone number of the attorney who will be representing Kiewit Pacific in this matter.

Thank you,

Adrienne

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